(1)

11-12-01

No. 01-774

In The

Supreme Court of the United States

CITY OF LITTLE ROCK,

Petitioner,

v.

WILLIE MAE YOUNG,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether for purposes of determining municipal liability under 42 U.S.C. § 1983, the Fourth Amendment permits a municipality, or a county sheriff, a reasonable period of time after a court appearance to accomplish administrative tasks required to out-process pretrial detainees whose charges are dismissed?

Whether pursuant to 42 U.S.C. § 1983 a municipality, which in accordance with state law uses a county jail to detain persons arrested for state criminal law violations, may be held liable for the unconstitutional acts of county jail employees committed without the participation or knowledge of the city?

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PETITION FOR WRIT OF CERTIORARI

The City of Little Rock respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals, filed on May 2, 2001, is reported at 249 F.3d 730 (8th Cir. 2001) and is reproduced as Appendix (App.) 1 through 15. The order of the court of appeals denying rehearing en banc and rehearing by the panel was filed on August 14, 2001 and is reproduced at App. 33. The relevant prior opinion and orders of the district court are unreported and are reproduced herein as App. 16 through 32. Page references are to the version in the appendix.

JURISDICTION

The court of appeals entered its judgment on May 2, 2001 and denied rehearing en banc and by the panel on August 14, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Fourth Amendment to the U.S. Constitution states:

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> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

42 U.S.C. § 1983 states:

> § 1983. Civil Action for deprivation of rights
>
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Ark. Code Ann. § 12-41-502 (Michie Repl. 1995) states:

> 12-41-502. Supervision.
>
> The sheriff of each county in this state shall have the custody, rule, and charge of the jail

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within his county and all prisoners committed in his county, and he may appoint a jailer for whose conduct he shall be responsible.

Ark. Code Ann. § 12-41-503 (Michie Repl. 1995) states in relevant part:

12-41-503 Management of local jail populations.

(a) Sheriffs and other keepers or administrators of jails within the State of Arkansas are responsible for managing the populations and operations of their respective facilities in compliance with the laws and constitution of this state and within the requirements of the United States Constitution.

STATEMENT

On November 11, 1996, Respondent Willie Mae Young (Ms. Young) was arrested pursuant to a failure to appear warrant issued for her sister-in-law who had provided Ms. Young's name as an alias. Because there was a hold on the warrant, Ms. Young was detained in the Pulaski County jail until her arraignment in Little Rock Municipal Court on November 13, less than 48 hours later.

The County Sheriff's office, pursuant to its policies, transported Ms. Young to the court hearing wearing a county-issued orange jumpsuit jail uniform. Her own clothing and personal belongings were at the jail.

Ms. Young, who was represented by counsel, plead mistaken identification. The state court judge ordered a fingerprint comparison and, after it exonerated her, ordered Ms. Young released. In accordance with the Court's procedures, a speed letter was prepared which

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stated Ms. Young was to be released if there were no other holds pending against her. App. 38.

Under Arkansas statutory law, the County Sheriff is responsible for the operation and maintenance of the county jail in accordance with state standards and federal constitutional requirements. Ark. Code Ann. § 12-41-502, 503 (Michie Repl. 1995). The City of Little Rock, having no jail of its own, presents persons arrested for state criminal law violations to the County Sheriff to be detained. County policy requires written, not verbal, authority for the jail to release a detainee. [R. 6/15/99 pp. 78-79.] The speed letter issued by the court after Ms. Young's appearance, as a part of its standard practice, noted that Ms. Young was to be released "if no other detainers." App. 38.

After the Court made its finding, Ms. Young was taken by the Court's bailiff to a lock-up facility near the courtroom, pursuant to County policy, and held for approximately 30 minutes until transport officers from the Pulaski County Sheriff's Office arrived to return her and other detainees to the jail. Ms. Young's defense counsel raised no objection to her continued incarceration.

Once at the jail, members of the Sheriff's office took various actions to process detainees. The out-processing includes transporting a detainee to the jail, reviewing any speed letter sent by the Court, accounting for the detainee, returning any personal property to the detainee, checking for other property in the detainees' individual cell, and checking to see if there are any additional outstanding warrants. This process for Ms. Young took approximately two and one-half hours.

Not part of any authorized County policy, and unknown to the City, Ms. Young was subjected to a strip search by a County employee. The City does not contest that this search was unconstitutional and Little Rock Assistant Chief of Police Stuart Thomas noted he knew of no other case like Ms. Young's. [R. 6/15/99 p.128]

State statute provides the County Sheriff with authority to operate the county jail. Ark. Code Ann. § 12-41-502 (Michie Repl. 1995). The City did not delegate authority to the County Sheriff. State statute provides that authority. In fact, the County Sheriff, Randy Johnson, testified that he was in charge of the jail and that county policies exist for operating the jail, which includes booking, housing, transporting, and releasing persons in custody. [R. 6/15/99 p.61, 77]. Little Rock Assistant Chief Stuart Thomas testified that while the sheriff might listen to comments from local governments, all final decisions about operating the jail were the sheriff's. [R. 6/15/99 pp.119-20.] Prior to trial, Pulaski County settled Young's claims for $47,500.

The jury returned a verdict against the City for $35,000 in damages for the 20 to 30 minutes Ms. Young testified she was held in a holding cell at the Little Rock municipal court [R. 6/14/99 p.47] – a state court under the Arkansas Constitution – and $65,000 in damages for the time she was in the custody of Pulaski County Sheriff's employees.

REASONS WHY THE PETITION SHOULD BE GRANTED

I. This case provides the Court the opportunity to declare as a matter of law that no constitutional violation occurs when a local government acts within a reasonable time to complete the release process for a pretrial detainee in custody after a court order of acquittal, dismissal, or release.

a. The impact of the decision in this case is enormous. Pursuant to 42 U.S.C. § 1983, the Eighth Circuit upheld a $65,000 verdict against a City for the two and one-half hours it took a county sheriff in the State's major population center to out-process a person released from custody. No similar judgment exists in any recorded opinion.

b. Further, the Eighth Circuit had no problems in upholding the $35,000 for the 30 minutes it took to pick Ms. Young up for return to the Pulaski County jail. Even defendants acquitted in federal court of criminal charges, if in custody prior to trial, are returned to the U.S. Marshall's office for 10 to 15 minutes to assure that there are no outstanding warrants. Throughout the country, the practice of taking pretrial detainees to Court in distinctive garb – an orange jumpsuit – is commonplace as a security measure. Therefore, if this case stands, the failure of a city to arrange the immediate release and transportation of a county prisoner will result in Section 1983 liability for a Fourth Amendment violation. That is not the law. In other words, this case can stand for the proposition that the Fourth Amendment requires a city to operate a special taxi service for the various state courts

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located within a county. Of course, no such requirement exists.

c. The Fourth Amendment only prohibits unreasonable seizures. The Court has ruled as a matter of law that a prompt judicial hearing within 48 hours of a warrantless arrest to determine if probable cause exists, avoids constitutional liability. *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991). The Court should take this case to rule as a matter of law that taking a reasonable amount of time to out-process a detainee from custody does not implicate the Fourth Amendment.

d. Instead, the District Court permitted the jury to become enmeshed in the minutiae of county jail regulations on release procedures, a result denied even to federal judges. *See Lewis v. Casey*, 518 U.S. 343, 362 (1996). What is worse, though, is that the Eighth Circuit permitted the jury verdict – which refused to recognize that some time is required for out-processing – to stand because "[c]ertainly the jury might have accepted this argument, but we do not think it had to." App. 10.

e. Presently, the federal circuit courts of appeal are split on the question of whether a municipality, or a county sheriff operating a county jail, must be accorded reasonable time to accomplish administrative tasks required to out-process a detainee after charges against the detainee are dismissed. *Compare Young v. City of Little Rock, with Lewis v. O'Grady*, 853 F.2d 1366, 1369-70 (7th Cir. 1988); *Whirl v. Kern*, 407 F.2d 781, 792 (5th Cir. 1968), *cert. denied*, 396 U.S. 901 (1969); (jailer who fails to comply with a court-ordered release does not commit "an instant [constitutional] tort at the moment the prisoner should

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have been released."); *Mason v. Stock*, 955 F. Supp. 1293 (D. Kan. 1997) (short delay after grounds for detention have dissipated not unconstitutional); *Pennington v. Hobson*, 719 F. Supp. 760, 779 (S.D. Ind. 1989) ("there is a substantive due process right to release within a reasonable amount of time after law enforcement officials learn that a detainee is innocent of the charges.").

f. The impracticality of a courtroom release, which was addressed by the Seventh Circuit's *Lewis* opinion, was also addfessed in this case. Assistant Little Rock Police Chief Stuart Thomas testified to the practical difficulties of releasing detainees directly out of a courtroom. (R. 110-13, 6/15/1999). Detainees are dressed in uniforms owned by the county while their own clothing, identification, and possessions are at the jail. The county arranges secure transportation for detainees back to the jail and without that secure transportation, there would be myriad difficulties with allowing them to make their way independently back to the jail with the paperwork authorizing their release. Jail computer records, until updated, would show the person was, or should be, in custody of the jail. That fact and the wearing of the orange jumpsuit jail uniform would subject detainees to considerable inquiry from law enforcement officers, given that the jail uniform is a signal that the person is in custody and that something is awry if a person is unaccompanied and walking or driving around.

g. Indeed, as noted above, even in the face of systematic delays in the release of prisoners, a federal district court would be restrained to enter injunctive relief that required a local government immediately to transport and release such a prisoner (much less make a City

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liable for not taking such control and action over a county prisoner). Yet, this case permits a jury to impose significant liability because, as the Eighth Circuit said, it does not choose to accept the argument "that some period of time must be allowed for an order to be carried out, and that certain administrative formalities (referred to as out-processing) are permissible." App. 10.

h. How will city officials determine which prisoners have to be immediately transferred to a county jail, and which ones will not? Even if a category is ultimately defined by judicial gloss, are cities subject to strict liability pursuant to Section 1983 if they cannot immediately transport a particular prisoner? For that matter, in a situation such as this one where the County, a distinct government, operates the jail pursuant to State law, and the County Sheriff has total statutory control over jail procedures, will a city be liable even though the county declares that no such immediate transfers are to take place? More to the point, should there be any constitutional liability absent a finding that the transport procedures are, in and of themselves, unreasonable under the Fourth Amendment?

i. There are cases, which cannot be relied upon because they are unpublished, that clearly hold there is no constitutional violation presented in similar circumstances. This Court should use this case to declare that if there are reasonable procedures for the out-processing of a pretrial detainee ordered released by the Court, no constitutional violation occurs because of the two hours necessary to carry out those procedures.

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II. The Court should resolve a conflict among the circuits as to whether one local government, which after the arrest of an individual has no authority over the manner in which the person is detained, may be held liable under 42 U.S.C. § 1983 for the actions of another local government, or its employees, which is responsible for the detention of arrestees and which violates the constitutional rights of the person detained.

a. For municipal liability to attach under 42 U.S.C. § 1983, municipal policy or custom must cause the constitutional violation. *Monell v. Department of Soc. Servs.*, 436 U.S. 658, 694 (1978). This Court has stated that "a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights." *Board of County Comm'rs of Bryan County, Okla. v. Brown*, 117 S.Ct. 1382, 1388 (1997). The Eighth Circuit's decision in this case gives a wholly different interpretation to that rule than does the Sixth Circuit in *Deaton v. Montgomery County, Ohio*, 989 F.2d 885, 888 (6th Cir. 1993).

b. Here, the Eighth Circuit declared that it was "far from unfair to attribute to the City the policies routinely used by the County jail in the housing and processing of City prisoners." App. 12. The basis for this conclusion was the fact that county personnel chained prisoners leaving the jail and transported them back to the jail. In addition, the Eighth Circuit concluded that strip searching prisoners was a routine procedure, although no evidence in the record supported such a conclusion, much less demonstrated that City officials knew of any such

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procedure being employed against persons returned to the jail for out-processing.

c. In *Deaton*, the Sixth Circuit was asked to decide whether Section 1983 liability for the violation of a constitutional right by city personnel operating a city jail was properly attributable to the county that had contracted with the city for it to provide jail services. The court held that absent notice of such violations, "one may assume that a governmental entity, housing prisoners, is in compliance with state law." *Deaton*, 989 F.2d at 888. Hence, the county could not be deemed the moving force behind any constitutional violation that occurred simply because it contracted with the city to house its prisoners.

d. Further, unlike the Eighth Circuit, the Sixth Circuit ruled that since these were two distinct governmental units, as opposed to a government and a private contractor, there was absolutely no reason to hold one government liable for the actions of another. Other courts have found that harm occurring at one governmental entity's jail should not be attributable to a different local government. *Patrick v. Jasper County*, 901 F.2d 561, 569 (7th Cir. 1990) (" . . . once [the plaintiff] was transferred to the LaPorte County jail, he was no longer within the control, at least for detention purposes, of Jasper County policy making officials. . . . "); *Carter v. Mayor and City Council of Baltimore*, 2001 WL 1092108 (D. Md. Sept. 13, 2001) ("no showing that a persistent and widespread municipal practice existed which resulted in the erroneous arrest and detention of the plaintiff"); *Sampson v. City of Xenia*, 108 F. Supp. 2d 821, 839 (S.D. Ohio 1999) (action against the city dismissed, even though it had arrested a suspect who was then mistakenly confined for

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three months in a county jail after all charges were dismissed because the city does not establish policies or customs of the municipal court at which slips in record keeping had failed to ensure the detainee's release).

e. Yet, the Eighth Circuit's decision in *Young* is not an isolated anomaly. A federal district court has relied upon *Young* to assess municipal liability under Section 1983 when it considered the "interesting question of institutional responsibility" where the "plaintiffs' claims fit none of the standard analytic models for municipal liability." *Ford v. City of Boston*, 154 F. Supp. 2d 131, 148-49 (D. Mass. 2001). (A distinguishing feature in *Ford* is the district court's finding that unconstitutional booking searches had been conducted at the jail for years according to an explicit policy).

f. Even if Ms. Young's delayed release might give rise to a constitutional violation, there was nothing to show that this delay, or the strip search of Ms. Young by county officials, was other than a one-time aberration. Certainly no action taken by a person delegated final authority by the City caused Ms. Young's injury; nor was there widespread or persistent misconduct by city employees which could be fairly said to constitute a custom or usage which held the force of law. *See, e.g., Dettelis v. City of Buffalo*, 3 F. Supp. 2d 341, 348 (W.D.N.Y. 1998) (five illegal searches in seven years not a custom); *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1444 (9th Cir. 1989) ("[c]onsistent with the commonly understood meaning of custom, proof of random acts or isolated events are insufficient to establish custom.").

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g. Indeed, this Court recently revisited its conclusions on this question of vicarious municipal liability under Section 1983, and stated that "rigorous standards of culpability and causation must be applied" to ensure that liability is not imposed on a municipality simply on the basis of a theory of respondeat superior. *Brown*, 520 U.S. at 415.

h. In this case, a city has been subjected to Section 1983 liability for the actions of a county, and county officials, to which state law provides control over a particular area, i.e., operation of a county jail. Ark. Code Ann. § 12-41-502 (Michie Repl. 1995). Yet, unlike the situation in *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986), the City did not even participate in the alleged unconstitutional actions. A bailiff for a state court judge escorted Ms. Young back to the lockup after the Judge's decision to release her (without any objection from her defense lawyer). A county sheriff's employee transported her to the county jail where different county employees conducted the out-processing and the unconstitutional strip-search. Surely, no less rigorous standards than those this Court outlined in *Brown* apply when it is the behavior of an employee of another governmental entity, over whom the City has no authority, control, or responsibility, that violates the constitution.

i. If so, the Court should grant certiorari in this case and declare that a city is not responsible for the actions of a county official, particularly when there is no notice of any constitutional violation, and the county official is performing actions commended by state law to the county.

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j. The Eighth Circuit did not find fault with the jury verdict in this case even though the opinion does not discuss the District Court's failure to instruct the jury that the county had this responsibility for jail operations pursuant to state statute. (App. 14-15).

k. Nor did the Eighth Circuit find fault with the District Court's failure to instruct the jury that some City action had to be the "moving force" behind a violation of Ms. Young's constitutional right. (App. 14). Yet this Court has clearly ruled that Congress intended municipal liability to be limited to "situations that municipalities could control, without obligating municipalities to control the conduct of others." *Pembaur*, 475 U.S. at 478-79; *Carter*, 2001 WL 1092108 (D.Md. Sept. 13, 2001) (plaintiff's wrongful 36-day confinement not actionable against city where no persistent and widespread municipal practice existed which caused the erroneous arrest and detention).

l. Already a district court in the Second Circuit has followed the Eighth Circuit's rationale to find municipal liability in this case. As more district courts in that populous jurisdiction do so, the clear conflict between the Sixth and the Eighth Circuits will be more compelling, time consuming, and expensive for law enforcement and local governments as they try to discern the proper application of Section 1983 in the context of pretrial detainees arrested by one government, but incarcerated and cared for by another. In light of the existent conflict, this Court should take this case and announce the proper constitutional rule to apply in this situation.

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CONCLUSION

This case impacts thousands of local, state, and federal law enforcement agencies throughout the country. It currently stands for the proposition that a city is responsible to pay a $100,000 judgment for the actions of county jail personnel even though, pursuant to state law, the City has absolutely no authority for the operation, maintenance, or regulation of the county jail. The fact that a federal district court in Boston has already relied upon this ruling demonstrates that its impact is not limited, or that its error is a mere aberration. (If this Court believes that the case is a mere aberration, then summary reversal is appropriate). However, because of the important constitutional questions outlined above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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App. 1

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Nos. 99-3595EA, 99-3601EA, 99-4218EA

No. 99-3595EA

Willie Mae Young,

Appellee,

v.

City of Little Rock, a Public Body Corporate,

Appellant.

On Appeal from the United States District Court for the Eastern District of Arkansas

No. 99-3601EA

Willie Mae Young,

Appellant,

v.

City of Little Rock, A Public Body Corporate; James Brown, Badge Number 16781, Little Rock Police Department, in his individual capacity; Robert Haggard; and

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Shirley Shook, in her individual capacity,

Appellees.

No. 99-4218EA

Willie Mae Young,

Appellee,

v.

City of Little Rock, a Public Body Corporate,

Appellant.

On Appeal from the United States District Court for the Eastern District of Arkansas.

Submitted: December 15, 2000

Filed: May 2, 2001

Before WOLLMAN, Chief Judge, RICHARD S. ARNOLD and HANSEN, Circuit Judges.

RICHARD S. ARNOLD, Circuit Judge.

A jury awarded Willie Mae Young $100,000 in her 42 U.S.C. § 1983 action arising out of her arrest and detention by the City of Little Rock Police Department. Ms. Young and the City cross-appeal, each challenging var-

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ious aspects of the District Court's[1] final judgment. We affirm in all respects.

I.

A car in which Ms. Young was a passenger was stopped for a minor traffic violation by Little Rock Police Officer James Brown at about 3:30 p.m. on a Saturday afternoon. Officer Brown's car computer indicated an active arrest warrant for Ms. Young (for failure to report and pay probation fees). He called a police communications operator, Shirley Shook, for verification of the warrant and was told that the warrant was for Ms. Young. In actuality, this warrant was for Ms. Young's sister-in-law, Glenda Marie Walker, who had on occasion used Ms. Young's name as an alias. Ms. Shook misread the information on her computer and failed to notice that Ms. Young's name was listed only as an alias.

Officer Brown took Ms. Young to the Pulaski County jail. The City does not have its own jail but uses the one operated by Pulaski County. At the jail, the intake deputy, Yvonne Engram, accepted Ms. Young for lock-up even though the copy of the warrant which had been faxed to the jail showed Ms. Walker as the subject of the warrant. When he saw the copy of the warrant and attached photograph, Officer Brown thought he had made a mistake and at approximately 6:00 p.m. told a supervisor on duty, Sergeant Robert Haggard, about it. Sergeant Haggard told Officer Brown to seek guidance from the Little Rock

[1] The Hon. Susan Webber Wright, Chief Judge, United States District Court for the Eastern District of Arkansas.

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Police Department's detectives' office. Officer Brown did so and reported back that he was told Ms. Young would have to remain in jail until Monday morning, when a judge could decide what to do. During this detention, Ms. Young was strip searched.

On Monday morning in the courtroom, the municipal court judge determined that the wrong person had been arrested and ordered Ms. Young released. Instead of releasing Ms. Young, a City police officer returned her to a holding cell, where she remained for approximately 30 minutes. She was then chained to other female detainees and transported back to the County jail, where her clothing and belongings were. While there – approximately 2-1/2 hours – she was again strip searched. Out-processing was completed and Ms. Young was released at about 2:00 p.m.

II.

Ms. Young filed this action under 42 U.S.C. § 1983 claiming that her Fourth and Fourteenth Amendment rights were violated. She named as defendants the City; Officer Brown, Ms. Shook, Sergeant Haggard, and Deputy Engram, all in their individual capacities; and Randy Johnson, in his official capacity as Pulaski County Sheriff.

In considering pre-trial motions to dismiss and for summary judgment, the District Court determined that Ms. Young's arrest and pre-hearing detention did not violate the Fourth Amendment. The Court first concluded that Officer Brown's actions at the time of the arrest were objectively reasonable in light of the facts and circumstances confronting him, and that Ms. Shook did not

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know her actions would lead to the arrest of an innocent person. The Court then concluded that the judicial hearing to determine probable cause which was provided within 46 hours of Ms. Young's arrest met constitutional requirements for her pre-hearing detention. According to the Court, an objective view of the facts known to Officer Brown and Sergeant Haggard prior to the hearing "did not negate, beyond a reasonable doubt, the probable cause that supported Young's detention." The Court also concluded that no evidence existed that the City had a policy or custom which caused Ms. Young's pre-hearing detention. Based on these conclusions, the District Court dismissed Sergeant Haggard, Ms. Shook, and Ms. Engram, granted summary judgment to Officer Brown, and granted summary judgment to the City for any claim based on the arrest and detention before the judge's order of release.

Sheriff Johnson and Ms. Engram, the County defendants, settled the claims against them for $47,500, and the remaining claims against the City, based on Ms. Young's post-hearing detention, proceeded to trial. The jury returned a verdict in favor of Ms. Young and, by special verdict form, awarded her damages for two separate periods of time – $35,000 for the time in the holding cell ("period one"), and $65,000 for the time back at the County jail ("period two").

The District Court offset this award in light of the settlement with the County defendants. The Court noted that after deduction of her attorney's fees, Ms. Young received $31,666.67 of the $47,500 settlement. Exercising its discretion to award Ms. Young attorney's fees under 42 U.S.C. § 1988(b) as the prevailing party, the Court

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offset the jury award by the $31,666.67 Ms. Young actually received from the County. The Court denied the City's post-trial motion for judgment as a matter of law, for a new trial, or for remittitur, concluding that the jury's verdict was supported by the evidence. By separate order, the Court granted Ms. Young $86,013.08 in attorney's fees. This figure resulted after a reduction equal to the amount of fees the plaintiff had paid out of the County's settlement.

III.

On appeal, the City first argues that, as a matter of law, there was no violation of Ms. Young's constitutional rights during "period one," while she was awaiting the completion of necessary paperwork for her release. The City next argues that, as a matter of law, the harm sustained by Ms. Young during "period two" is not attributable to the City, but rather to the County. In particular, the City argues that there was no causal link between the strip search and City custom or policy.

The City also asserts evidentiary error in the admission of evidence of Ms. Young's treatment while in County custody before going to court, and instructional error in the District Court's rejection of the City's proposed instructions (1) on the causation element of an unreasonable seizure, (2) that the municipal court judge and his bailiff were not City actors, and (3) that under Arkansas law, the sheriff of a county is solely responsible for the County jail.

The City also argues that the entire amount of the settlement with the County should have been offset, and

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that the amount of damages awarded by the jury was excessive.

Ms. Young argues on appeal that she stated a claim against the City for a custom or policy that allows too many mistaken-identity arrests, and that, accordingly, her claim for damages against the City for the one-and-one-half days of detention *before* the municipal judge's order of release should not have been dismissed. Ms. Young also argues that her claims against Officer Brown, Ms. Shook, and Sergeant Haggard should not have been dismissed prior to trial. Officer Haggard argues in response that the District Court correctly determined that a constitutional claim was not stated against him, and that, alternatively, he is entitled to qualified immunity.

IV.

We review the District Court's grant of motions to dismiss and motions for summary judgment de novo. *Anderson v. Franklin County*, 192 F.3d 1125, 1131 (8th Cir. 1999). A motion to dismiss should be granted only if, taking the allegations in the complaint as true, it appears beyond doubt that plaintiff can prove no set of facts demonstrating entitlement to relief. *Id.* A motion for summary judgment should be granted only if there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c).

We first conclude that the District Court's ruling that no claim was stated against Officer Brown or Ms. Shook arising out of the arrest and initial detention was correct.

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When Officer Brown made the initial arrest, his car computer showed that there was a warrant for Ms. Young, and Ms. Shook had verified this information over the radio. Officer Brown had an objectively reasonable basis for making the arrest. As to Ms. Shook, she was mistaken, but the mistake was not deliberate. It was occasioned, rather, by the press of business and by the speed with which officers in Ms. Shook's position were required to act. A mistake made under these conditions, in our view, is not sufficient to render an arrest "unreasonable" within the meaning of the Fourth Amendment. Nor do we see any evidence of a custom or policy of the City here that led to the mistaken arrest. The City can be faulted for not putting in place more precise procedures, but there is no evidence of a custom or policy of making mistaken arrests. Ms. Shook's mistake, and Officer Brown's reliance on it, amounted to nothing more than negligence, which normally does not give rise to a claim under § 1983. See *Lane v. Sarpy County*, 165 F.3d 623, 624 (8th Cir. 1999).

The next sequence of events, occurring after Ms. Young had been taken to the jail, presents a closer question. By this time, Officer Brown had realized that there was no warrant for Ms. Young in her own name, and that her name appeared in "the system" only as an alias for her sister, Glenda Marie Walker. He looked at Ms. Walker's photograph and formed the opinion that Ms. Young was not the person in the photograph. There is, however, no evidence that Officer Brown had the authority to release Ms. Young. It seems to us that he did what he should have done: he reported the facts to Sergeant Haggard, a superior officer. Sergeant Haggard advised Officer Brown to consult the detectives' office, and,

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according to Officer Brown, he was then instructed that the matter would have to wait for action by the court, which would not occur until Monday morning.

Ms. Young argues that Officer Brown and, through him, Sergeant Haggard, had actual knowledge at this point that Ms. Young had been improperly arrested. We think this overstates the case. Certainly there was reason to question whether a mistake had been made, but the situation was equivocal. Officer Brown had originally been informed that there was a warrant for Ms. Young in her own name. Thereafter, he learned that Ms. Walker had been using Ms. Young's name as an alias. The photograph did not match the appearance of the person arrested. On these facts, we believe that an objectively reasonable officer could have decided to wait for a judge to make the final determination. That the arrest occurred on a week end, when the judge was not readily available, is unfortunate. Indeed, it is more than that: it shows a decided lack of solicitude on the part of the City for the liberty of its citizens. We have to remember, however, the conditions under which police officers must work. We believe that Officer Brown and Sergeant Haggard were entitled to qualified immunity: that is, that a reasonable officer could have thought it reasonable to wait for a judge's decision.

This conclusion is supported by the Supreme Court's decision in *Baker v. McCollan*, 443 U.S. 137 (1979). The case holds that the Fourth Amendment is not violated when an individual is arrested and detained (mistakenly) pursuant to a valid warrant for another person, where the person detained receives a probable-cause hearing within three days of the arrest. *Id.* at 142-43. The Court declined

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to impose upon police officers an affirmative duty of investigating claims of mistaken identity. See also *Lane v. Sarpy County, supra; Johnson v. City of St. Paul,* 634 F.2d 1146 (8th Cir. 1980). The plaintiff argues that *Baker* is distinguishable. In *Baker,* the fact of the mistaken identity was not discovered for three days. Here, plaintiff argues, the defendants knew that they had the wrong woman, but decided to keep her detained for a probable-cause hearing on Monday morning nonetheless. If we were faced head on with the question whether the Fourth Amendment was violated, this distinction might well prove dispositive. But when the doctrine of qualified immunity is taken into account, we believe the District Court correctly held that these individual police officers are not liable in an action for damages. We decline to hold officers in this situation to the niceties of legal distinctions, even though the distinctions might seem persuasive to judges in the light of hindsight.

V.

We now turn to the portion of the case that went to the jury – the action against the City of Little Rock for events that took place after Ms. Young was ordered released by the Municipal Court. The City argues that some period of time must be allowed for an order of release to be carried out, and that certain administrative formalities (referred to as "out-processing") are permissible. Certainly the jury might have accepted this argument, but we do not think it had to. When Ms. Young appeared in court on Monday morning, the judge ordered

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a thumbprint comparison, a more reliable means of identification than a photograph. On the basis of this comparison, the court found that Ms. Young had not been properly arrested. The court stated: "show this lady released." Instead of releasing her, however, officers returned her to the holding cell, along with other prisoners, for transportation back to the jail. She was chained to five or six other female inmates, loaded onto a van, transported to the jail, and there strip searched, all of this occurring after the court had ordered her released. The strip search took place in front of five or six other people. Only after this was she allowed to change into her own clothes and actually set free.

The City contends that the phrase "show her released" is not the same thing as ordering her released in the courtroom. The matter, we suppose, is arguable, but it is not so clear as to make the jury's verdict unreasonable as a matter of law. Indeed, the City itself, in its answer to paragraph 41 of the complaint, stated that "Judge Munson . . . dismissed the charge as to Mrs. Young and ordered her released. . . . " The City says it was not practical to release her at that time, because she was still in jail clothing (an orange jumpsuit). We think the jury could reasonably conclude that this aspect of the problem could have been left up to the plaintiff. In addition, the City could have had her transported back to the jail without chaining her, and certainly there was no necessity whatever to strip search a person who was wholly innocent of any charge. The whole incident is shocking.

As the City points out, it does not operate the jail. The City of Little Rock has no jail of its own. It contracts

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with the County for the housing of City prisoners. What the County does with prisoners, therefore, the City says, is not its problem, and there is no vicarious liability under § 1983. Although this line of argument has some surface appeal, we do not believe that the jury had to accept it. City employees were aware of the custom of chaining prisoners, and they knew that Ms. Young was being taken back to the jail. Strip searching of prisoners is routine procedure, and the jury could reasonably infer that the City knew that a person entering the jail, in jail clothing with a group of other detainees, would be strip searched. In these circumstances, it is far from unfair to attribute to the City the policies routinely used by the County jail in the housing and processing of City prisoners.

The City argues that the verdict is too high – $35,000 for the time spent in the holding cell at the Municipal Court after the order of release, and $65,000 for the time spent at the jail before release actually occurred. We grant that the amounts are high, but they are not so excessive as to be shocking. The liberty of the individual is at stake here. A citizen had been arrested, erroneously as it turned out, and a court had ordered her released. The court's order had not been followed. Instead, a process of administrative foot-dragging took place, characterized by gross indignities. There was evidence of serious psychological harm, including the facts that Ms. Young was reluctant to leave her house for a substantial period of time following the incident, and that she became ill when questioned by a police officer in front of her home (in a completely unrelated incident). We cannot say that the jury's award was "shocking, monstrous, or constitute[d] a

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plain injustice." *City National Bank v. Unique Structures, Inc.*, 929 F.2d 1308, 1315 (8th Cir. 1991).

VI.

The City argues that it did not receive sufficient credit for the settlement paid by the County. This argument is based on the Arkansas version of the Uniform Contribution Among Joint Tortfeasors Act, Ark. Code. Ann. § 16-61-204 (Michie 1987). This statute reads as follows:

> A release by the injured person of one (1) joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides; but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.

The County defendants paid $47,500 to settle the claims against them. This amount included claims for attorneys' fees and costs. The fee, by agreement between Ms. Young and her lawyers, was one-third of the recovery. The remainder, $31,666.67, went to the plaintiff. When the court entered judgment after the $100,000 jury award, this figure was reduced by the amount that Ms. Young had received personally from the settlement. Thus, the judgment against the City was for $68,333.33.

The City argues that it should have received an additional credit, against the $100,000 jury award, of $15,833.33. The District Court rejected this argument, holding that under 42 U.S.C. § 1988(b) it had discretion to

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award attorneys' fees to a prevailing party in an action brought to enforce § 1983. When awarding attorneys' fees after the entry of judgment, however, the District Court reduced the amount awarded by the portion of Ms. Young's settlement proceeds that represented fees. An award of fees is reviewed for abuse of discretion only. The trial court knows the case best. It knows what the lawyers have done, and how well they have done it. It knows what these efforts are worth. It knows how to balance portions of the case together to reach a just and reasonable award. We see no abuse of discretion here.

If the District Court had first reduced the $100,000 jury verdict by the full amount of the settlement paid by the County, it would then have awarded a judgment against the City for $52,500, instead of the actual award, which was something over $68,000. In this event, the City argues, the results obtained against it would have been somewhat less advantageous to the plaintiff, and the fee awarded might have been accordingly reduced. We acknowledge the theoretical force of this argument, but we believe the District Court was well aware of what it was doing, and that the ultimate fee award, which took into account the fees that had been paid out of the County settlement, was reasonable. Accordingly, the fee award is affirmed.

VII.

As we have indicated, the City also argues that there was error in the admission of evidence, and that certain jury instructions it requested should have been given. These arguments do not require extended discussion.

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There was no abuse of discretion in the admission of evidence. The instructions as given, when considered as a whole, correctly stated the law. The jury was required to find that Ms. Young's treatment, after she was ordered released, was a direct result of a policy of the City. Certainly it is true, in the ordinary case, that a sheriff is solely responsible for the operation of the county jail, but this is not an ordinary case. The County jail was functioning, in effect, as the City jail, and the jury could reasonably infer that the City was aware of the policies and practices customarily followed by the County at the jail.

The judgment and the award of attorneys' fees and costs are affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

WILLIE MAY YOUNG, Plaintiff	NO: LR-C-97-0035
VS.	(Filed Nov. 15, 1999)
THE CITY OF LITTLE ROCK, et al., Defendants	

ORDER

After prevailing at trial, plaintiff Willie Mae Young (Young) filed a motion for attorney's fees and costs, pursuant to 42 U.S.C. § 1988, seeking $89,465.33 in attorney's fees and $2,191.25 in costs [docket no. 126].[1] Separate defendant, the City of Little Rock (City), responded [docket no. 136], and Young replied to the City's response [docket no. 137]. The matter is already for decision, and after careful consideration, the Court determines Young's motion should be granted in part and denied in part.

I. Background

Young sued the City, City employees in their individual capacities, and Pulaski County (County), claiming the defendants arrested, detained, and searched her in violation of the United States Constitution. She alleged the

[1] In light of 19.73 hours spent responding to the City's objections to her motion, Young increased her request for attorney's fees to $93,411.33. *See* docket no. 137, attachment E.

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defendants unlawfully searched and detained her during two periods – before and after a probable cause hearing in which a judge ordered her release. The Court dismissed claims against the defendants sued in their individual capacities and claims against the City and County involving Young's arrest and pre-hearing detention. However, the Court retained Young's claims against the City and County involving her post-hearing detention and search.

Young settled with the County but presented her claims against the City to the jury, which returned a verdict in her favor and awarded her $100,000.00.[2] Pursuant to a motion by the City, the Court reduced Young's jury award by the amount of her settlement proceeds from the County, less the portion of proceeds attributable to attorney's fees.[3]

II. Discussion

A. Attorney's Fees

Title 42 U.S.C. § 1988 provides that in federal civil rights actions "the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs." "[A] plaintiff 'prevails' when actual relief on the merits of [his or her] claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Jenkins v. Missouri*, 127 F.3d 709, 713 (8th Cir. 1997) (quoting *Farrar v. Hobby*, 506 U.S. 103, 111-12 (1992)).

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[2] Docket nos. 113 & 118.

[3] Docket no. 118.

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Clearly, Young qualifies as a prevailing party, entitled to attorney's fees. In calculating her fee award, the Court will use the "lodestar" method, which entails multiplying the number of hours reasonably expended by the relevant market rate for legal services. *See Jensen v. Clarke*, 94 F.3d 1191, 1203 (8th Cir. 1996).

Reasonable Hours

Young apportions hours of work performed by her attorney, Mr. Robert Pressman, between two periods. For the first period 11/29/96 to 11/30/98, she seeks attorney's fees for 204.38 hours. For the second period, 12/8/98 to the present, she seeks attorney's fees for 354.71 hours.[4]

Young submitted documentation itemizing the amount of time Pressman expended on specific activities related to her representation.[5] The documentation shows that Pressman spent 18.45 hours responding to the City's post-trial motions after the Court entered an Order denying the motions.[6] The City asserts these hours were unnecessary and should not be included in the lodestar amount. The Court agrees and will reduce Young's award accordingly.

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[4] *See* docket no. 126, attachment A (requesting fees for 334.98 hours); docket 137, attachment E (requesting fees for an additional 19.73 hours).

[5] *See* docket no. 126, exhibit 1.

[6] *See* docket no. 126, exhibit 1, page 19; docket no. 125 (Order denying the City's post-trial motions).

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With the exception of work performed responding to the City's post-trial motions, the Court finds that Pressman expended a reasonable amount of time performing the documented activities. But because Young prevailed on only a portion of her original claims, the Court must determine whether to award her fees for work expended on matters on which she did not prevail.

In *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the Supreme Court provided the model for determining whether fees are compensable under § 1988 in cases in which the plaintiff has prevailed on some but not all claims included in a lawsuit. Under *Hensley*, if "any issues on which the plaintiff lost are unrelated to those on which he won, the unrelated issues must be treated as if they were separate cases and no fees can be awarded. If however the claims on which the plaintiff lost are related to those on which he won, the court may award a reasonable fee." *Jenkins*, 127 F.3d at 716.

As explained in the Court's pre-trial Orders, the legal standards applicable to Young's arrest, pre-hearing detention, pre-hearing search, post-hearing detention, and post-hearing search require reviewing the specific facts surrounding each separate event.[7] The Court finds that Young's claims involving events occurring before the municipal judge ordered her release unrelated to the claims on which she prevailed: her detention and search occurring after the judge ordered her release. Thus "the hours spent on the unsuccessful claims should be

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[7] *See* docket nos. 69 & 87.

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excluded in considering the amount of a reasonable fee." *Hensley* at 1943.

Documents appended to Young's motion for attorney's fees do not distinguish between hours worked pursuing her successful and unsuccessful claims,[8] but in an attempt to account for work expended on her unsuccessful claims, Young requests only 30% of the hours Pressman worked from 11/29/96 to 11/30/98.[9] Young confines the 30% reduction to this period because on December 4, 1998, the Court dismissed Young's unsuccessful claims, and after that point, Pressman devoted his time to matters on which Young ultimately prevailed.

The City contends Young should receive an award based on 20% of the hours claimed (instead of Young's proposed 30%), asserting that Young's documentation is "replete with block billing entries, in which a number of different activities are lumped together . . . so that it is impossible to determine how much time was allocated to each activity."[10]

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[8] For example, Young's record of hours worked include the following:

12-04-96	legal research and make notes on content of the complaint
11-27-97	work on discovery
03-16-97	work on written discovery to L. Rock defendants, set two
06-12-97	work on dep. questions

Docket no. 126, exhibit 1.

[9] See docket no. 126, attachment A. Pressman worked a total of 681.27 hours during the first period.

[10] Docket no. 136, pages 6-7.

While Young bears the burden to establish entitlement to an award by documenting the appropriate hours of work expended, in cases involving multiple claims, "[m]uch of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis." *Hensley*, 103 S. Ct. at 1940-1941. In *Hensley*, the Supreme Court explained, "There is no precise rule for making these determinations. The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment." *Hensley*, 461 U.S. at 437. In this case, the Court finds an award based on 25% of hours worked before the Court dismissed Young's unsuccessful claims to be the most equitable way to account for her limited success.[11]

The City asserts that Young received attorney's fees as part of her settlement with the County and that the Court should reduce Young's award accordingly. Young reduced the amount she would have otherwise requested by $15,933.67, the portion of Young's settlement proceeds representing attorney's fees, and the Court finds Young's adjustment to be sufficient.

Finally, the City urges that Young should not be compensated for work performed prior to Mr. Pressman being formally admitted to participate in this case. Pressman does not reside in Arkansas and is not licensed to

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[11] Before the Court dismissed Young's unsuccessful claims, Pressman worked a total of 681.27 hours. *See* docket no. 126, exhibit 1, page 20. The Court will award an attorney's fee for 170.32 of the 681.27 hours.

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practice as a member of the Arkansas Bar. He represented Young as her attorney of record throughout this litigation but was not formally authorized to participate until June 7, 1999, a week before trial.

The Court finds that the date on which the Court formally accepted Mr. Pressman to participate in this case has no bearing on whether Young should be awarded an attorney's fee. To deny Young the majority of what she seeks on such narrow grounds would be inequitable and contrary to the purpose of § 1988.

Reasonable Rate

Young requests an award based on a rate of $250 per hour for 97.08 hours worked during the immediate trial period and $200 per hour for the remaining hours. She makes several points in support of the rates she requests, including the following. First, she asserts Mr. Pressman has thirty-four years experience, with much of his work involving civil rights litigation.[12] Second, she presents results from a 1995 survey of eleven Little Rock law firms, published in *Arkansas Business*, in which eight of the firms reported charging a top rate of $200 or more per hour.[13] Third, Young notes that in 1997, this Court awarded attorney's fees for Pressman's legal services in a Title VII case, based on a rate of $200 per hour.[14] Fourth, Young asserts that the complexity of her case warrants the hourly rates she requests.

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[12] Docket no. 126, attachment B, ¶¶ 1-3, 5-12, & 14.

[13] Docket no. 127, attachment A.

[14] Docket no. 127, attachment B.

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The City asserts Young has failed to provide sufficient evidence regarding Pressman's skill and experience as a litigator and that the requested rates of $200 and $225 per hour are excessive. The City proposes that the Court base an award on the average rate listed in the 1995 *Arkansas Business* survey results: $140.23.

An attorney's fee award should be calculated using market rates, in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. *McDonald v. Armontrout*, 860 F.2d 1456, 1458-59 (8th Cir. 1988) (citing *Blum v. Stenson*, 465 U.S. 886, 895-96, 896 n.11 (1984)). Factors particularly relevant in determining a reasonable rate include the novelty and complexity of the issues, the special skill and experience of counsel, the quality of representation, and the results obtained. *Pennsylvania v. Delaware Valley Citizens' Council*, 106 S. Ct. 3088, 3098 (1986).

Young presents ample evidence showing Pressman to be a successful litigator, with significant experience in civil rights cases. Throughout this litigation Pressman worked diligently pursuing Young's claims against the City, which involved difficult issues regarding § 1983 municipal liability. Additionally, the results Pressman achieved were significant; the jury awarded Young the entire amount she requested.

The Court determines that a rate of $200 per hour is warranted. However, the Court declines awarding an increased fee for work expended during the immediate

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trial period and will base its award on a single hourly rate of $200.[15]

B. Costs

Young requests an award of costs, totaling $2,191.25.[16] Among costs Young itemizes are Mr. Pressman's travel expenses. The City notes that district courts within the Eighth Circuit have held such costs to be nontaxable under 28 U.S.C. § 1920.[17] However, under § 1988, a reasonable attorney's fee award may include reasonable out-of-pocket expenses incurred by an attorney and normally charged to a fee-paying client. *Pinkham v. Camex, Inc.*, 84 F.3d 292, 294-95 (8th Cir. 1996). Further,

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[15] Young requested $225 per hour for 97.08 hours of work executed during the immediate trial period, asserting that during this period, Pressman was working alone and under considerable pressure.

[16] Docket no. 126, attachment A & B.

[17] Section 1988 allows a prevailing party "a reasonable attorney's fee as part of the costs." The Supreme Court has held that unless otherwise specified by statute, the term "costs" is defined according to 28 U.S.C. § 1920. *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980).

Section 1920 permits a judge or clerk of any court of the United States to tax as costs the following: (1) Fees of the clerk and marshal; (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case; (3) Fees and disbursements for printing and witnesses; (4) Fees for exemplification and copies of papers necessarily obtained for use in the case; (5) Docket fees under section 1923 of this title; (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services.

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in *Craik v. Minnesota State University Board* the Eighth Circuit held that a § 1988 fee award may include reasonable travel time billed at the same hourly rate as the lawyer's normal working time, reasoning that "counsel retained by clients who pay on a regular hourly basis customarily charge for travel time, and civil-rights counsel should be no worse off." *Craik*, 738 F.2d 348, 350 (8th Cir. 1984).

While the Court may award Young attorney's fees for Pressman's travel *time*, travel *expenses* do not constitute recoverable costs and may not be awarded as such. Because Young has not documented the time Pressman spent traveling, the Court cannot include Pressman's travel time in her attorney's fee award.

Young's request for costs includes Federal Express charges, and the City argues these are not allowable costs under 28 U.S.C. § 1920. The Court agrees that Federal Express charges are not listed among the allowable items of costs set out in 28 U.S.C. § 1920, but out-of-pocket expenses for express mail are "of the kind normally charged to clients by attorneys" and should be included in Young's attorney's fee award. *See Pinkham v. Camex, Inc.*, 84 F.3d 292, 294-95 (8th Cir. 1996).[18]

Finally, the City objects to Young's claim for copying costs. Young requested 10 cents per copy for 2,500 copies, and the City objected that Young failed to support her

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[18] Young claims express mail charges for sending her amended and second amended complaint from Boston to Little Rock. *See* docket no. 126, attachment. Because these particular charges relate to Young's case as a whole, the Court will award costs based on 25% of these charges.

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claim with adequate documentation. In reply, Young submitted documentation supporting costs for 2,133 copies, for which the Court will award costs at 10 cents per copy.[19] The Court finds the remaining costs documented in Young's motion were reasonably expended.

III. CONCLUSION

THEREFORE, upon consideration of the plaintiff's motion for attorney's fees and costs and supplements and responses thereto, the motion is hereby GRANTED in PART and DENIED in PART [docket no. 126].

FURTHER, it is hereby ordered that attorney's fees be awarded to the plaintiff in the amount of $86,013.08.

506.58 hours[20] at $200 per hour	$101,316.00
Plus out-of-pocket express mail expenses	530.75
Less attorney's fees from County	(15,833.67)
	$86,013.08

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[19] Docket no. 137, attachment D. The Court computes Young's copying costs as follows:

Documented copies relating solely to Young's successful claims against the City	1552
Documented copies relating to all claims = 2,322 x 25%	581
	2,133

[20] This total includes hours 170.32 hours expended from 11/29/96 to 11/30/98 (681.27 x 25% = 170.32) and 336.26 hours expended 12/8/98 to the present (including 19.73 hours

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FURTHER, it is hereby ordered that costs be awarded to the plaintiff in the amount of $989.80.

Filing fee	$150.00
Charge for internal investigation report	28.50
Depositions (25% of total cost)	546.25
Charge for copies of criminal dockets	51.75
Copies (2,133 at 10 cents per copy)	213.30
	$989.80

IT IS SO ORDERED THIS 12th DAY OF NOVEMBER, 1999

/s/ Susan Webber Wright
CHIEF JUDGE
UNITED STATES COURT

This document entered on docket sheet in compliance with Rule 58 and/or 79(a) FRCP on 11-15-99 by D. Collins

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responding to the City's response to Young's motion forattorney's fees and not including 18.45 hours spent responding to the City's post-trial motions.)

11/29/01 THU 18:06 FAX 402 341 8712 COCKLE PRINTING 049

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

WILLIE MAE YOUNG, Plaintiff-	•	NO. LR-C-97-0035
VS.	•	(Filed July 12, 1999)
THE CITY OF LITTLE ROCK, et al., Defendants	•	

JUDGMENT ON JURY VERDICT

This action came on for trial June 14, 1999, before the Court and a Jury, the Honorable Susan Webber Wright, United States District Judge presiding. The issues having been duly tried, and after deliberating thereon, the jury returned a verdict on June 16, 1999 in favor of the plaintiff.

IT IS THEREFORE CONSIDERED, ORDERED, AND ADJUDGED that the plaintiff, Willie Mae Young, have and recover of and from the defendant, the City of Little Rock, the sum of $68,333.33[1] for damages, together with

---

[1] The jury awarded damages for two separate periods of time. The first period includes the time Young spent in a holding cell at the Little Rock Municipal Courthouse, after a judge ordered her release. The jury assessed Young's damages for the first period at $35,000. The second period includes the time Young spent at the Pulaski County Regional Detention Facility. The jury assessed Young's damages for the second period at $65,000.

Pulaski County, originally named as defendant in this matter, settled with Young before trial. The City moved that

11/28/01 TUE 16:07 FAX 402 341 8712 COCKLE PRINTING 020

interest from this date until paid at the rate of 5.163% per annum as provided by law, and her costs.

IT IS FURTHER ORDERED that the complaint against the John Doe defendant is hereby dismissed.

IT IS SO ORDERED THIS 12TH DAY OF JULY, 1999

/s/ Susan Webber Wright
CHIEF JUDGE
UNITED STATES DISTRICT COURT

THIS DOCUMENT ENTERED ON DOCKET SHEET IN COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP ON 7-12-99 BY J. DUGGARD

Young's award for the second period be reduced by the amount paid by the County. Additionally, Young's attorney filed a motion requesting entry of a judgment, taking account of the settlement [docket no. 117]. Arkansas has adopted the Uniform Contribution Among Joint Tortfeasors Act provision that provides a settlement with one tortfeasor reduces the claim against another tortfeasor "in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid." Ark. Code. Ann. 16-61-204. Accordingly, the Court agrees that the award should be reduced by the amount plaintiff received from her settlement with the city.

Young and the County settled for a total amount of $47,500.00, but Young received only $31,666.67, after deduction of her attorney's fee. Under 42 U.S.C. § 1988(b), this Court has discretion to award attorney fees to a prevailing party in an action brought to enforce 42 U.S.C. § 1983. This being such a case, the Court will offset Young's award by $31,666.67 – the amount she actually received in her settlement with the County.

11/29/01 THU 15:07 FAX 402 341 8712 COCKLE PRINTING 051

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

WILLIE MAE YOUNG, Plaintiff	•	NO. LR-C-97-0035
VS.	•	(Filed August 2, 1999)
THE CITY OF LITTLE ROCK, et al., Defendants	•	

ORDER

Trail [sic] on this matter concluded on June 16, 1999, when a jury returned a verdict for the plaintiff, Willie Mae Young, awarding her compensatory damages in the amount of $100,000.00. Pursuant to the jury's verdict, the Court entered judgment on July 12, 1999. Three post-trial motions are pending in this matter and ready for decision.

First, the defendant, the City of Little Rock, filed a motion for a judgment as a matter of law or (alternatively) for a new trial, remittitur, or alteration of the judgment. After careful consideration, and finding the jury's verdict supported by the evidence presented at trial, the Court denies the City's motion.

Second, the City filed a motion for stay of the judgment, pending disposition of the City's post-trial motions. Having denied the motions, the City's request for a stay of the judgment is denied as moot. The Court

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notes that the City may obtain a stay upon appeal, pursuant to Fed. R. Civ. P. 62(d), by giving a supersedeas bond "at or after the time of filing the notice of appeal."

Third, Young filed a motion requesting an extension of time in which to file a petition for attorney's fees until 10 days after the Court's resolution of the City's post-trial motions.

Local Rule 54.1 provides that a motion for attorney's fees shall be filed within 14 days after entry of an order granting or denying a post-trial motion. Because Local Rule 54.1 affords Young more time than she seeks to file her petition, an extension is unnecessary, and the motion for additional time is denied as moot.

THEREFORE, it is hereby ordered that the defendant's motion for a judgment as a matter of law or, alternatively, for a new trial, remittitur, or alteration of the judgment be DENIED [docket no. 120].

FURTHER, it is hereby ordered that the defendant's motion for a stay of the judgment be DENIED AS MOOT [docket no. 122].

FINALLY, it is hereby ordered that the plaintiff's motion for an extension of time be DENIED AS MOOT [docket no. 124].

11/29/01 THU 18:07 FAX 402 341 8712 COCKLE PRINTING 053

IT IS SO ORDERED THIS 30TH DAY OF JULY, 1999

/s/ Susan Webber Wright
CHIEF JUDGE
UNITED STATES DISTRICT COURT

THIS DOCUMENT ENTERED ON DOCKET SHEET IN COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP ON 8-3-99 BY VT

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 99-3595/3601/4218

Willie Mae Young, Appellant,	•	Order Denying Petition for Rehearing and for Rehearing En Banc
vs.	•	
City of Little Rock, et al.	•	
Appellees.	•	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

August 14, 2001

Order Entered at the Direction of the Court:

/s/ Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit

11/28/01 TUE 15:08 FAX 402 341 8712 COCKLE PRINTING 003

United States District Court
Eastern District of Arkansas
Western Division

INSTRUCTION NO. 7
[Given To Jury]

With respect to the plaintiff's claim that the defendant caused her to be subjected to an unreasonable seizure of her person during the first period, your verdict must be for the plaintiff if all of the following elements have been proved by the preponderance of the evidence:

First, a person or persons acting for the City of Little Rock seized the plaintiff during this period, and

Second, the seizure was unreasonable, and

Third, the person who seized the plaintiff did so pursuant to a policy of the City of Little Rock, and

Fourth, plaintiff suffered damages proximately caused by the seizure.

With respect to the plaintiff's claim that the defendant caused her to be subjected to an unreasonable seizure of her person during the second period, your verdict must be for the plaintiff if all of the following elements have been proved by the preponderance of the evidence:

First, a person or persons acting for the Pulaski County Sheriff's department seized the plaintiff during this period, and

Second, the seizure was unreasonable, and

Third, a policy or custom of the City of Little Rock amounted to deliberate indifference to the Fourth Amendment rights of persons in the plaintiff's position, and

Fourth, the seizure was a direct result of a policy of the City of Little Rock, and

Fifth, the plaintiff suffered damages, proximately caused by the seizure.

[Defendant's Proffered]

JURY INSTRUCTION NO. 7

WITH RESPECT TO THE PLAINTIFF'S CLAIM THAT THE DEFENDANT CAUSED HER TO BE SUBJECTED TO AN UNREASONABLE SEIZURE OF HER PERSON DURING THE FIRST PERIOD, YOUR VERDICT MUST BE FOR THE PLAINTIFF IF ALL OF THE FOLLOWING ELEMENTS HAVE BEEN PROVED BY THE PREPONDERANCE OF THE EVIDENCE:

FIRST, A PERSON OR PERSONS ACTING FOR THE CITY OF LITTLE ROCK SEIZED THE PLAINTIFF DURING THIS PERIOD; AND

SECOND, THE SEIZURE WAS UNREASONABLE WHEN CONSIDERING ALL THE SURROUNDING CIRCUMSTANCES; AND

THIRD, A POLICY OR CUSTOM OF THE CITY OF LITTLE ROCK WAS THE MOVING FORCE BEHIND THE UNREASONABLE SEIZURE; AND

FOURTH, PLAINTIFF SUFFERED DAMAGES PROXIMATELY CAUSED BY THE SEIZURE.

WITH RESPECT TO THE PLAINTIFF'S CLAIM THAT THE DEFENDANT CAUSED HER TO BE SUBJECTED TO AN UNREASONABLE SEIZURE OF HER

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PERSON DURING THE SECOND PERIOD, YOUR VERDICT MUST BE FOR THE PLAINTIFF IF ALL OF THE FOLLOWING ELEMENTS HAVE BEEN PROVED BY THE PREPONDERANCE OF THE EVIDENCE:

FIRST, PLAINTIFF WAS SEIZED DURING THIS PERIOD; AND

SECOND, THE SEIZURE WAS UNREASONABLE WHEN CONSIDERING ALL THE SURROUNDING CIRCUMSTANCES; AND

THIRD, A POLICY OR CUSTOM OF THE CITY OF LITTLE ROCK WAS THE MOVING FORCE BEHIND THE UNREASONABLE SEIZURE; AND

FOURTH, THAT PLAINTIFF SUFFERED DAMAGES PROXIMATELY CAUSED BY THE SEIZURE.

SOURCE: *Board of Commissioner v. Brown*, 117 S. Ct. 1382, 1388 (1997); *Skinner v. Railway Executives' Association*, 109 S. Ct. 1402, 1414 (1989).

[Defendant's Proffered]

JURY INSTRUCTION NO. ___

YOU ARE INSTRUCTED THAT, PURSUANT TO THE LAW OF THE STATE OF ARKANSAS, THE SHERIFF OF EACH COUNTY IN ARKANSAS SHALL HAVE THE CUSTODY, RULE, AND CHARGE OF THE JAIL WITHIN HIS COUNTY AND ALL PRISONERS COMMITTED IN HIS COUNTY, AND HE MAY APPOINT A

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JAILER FOR WHOSE CONDUCT HE SHALL BE RESPONSIBLE.

SOURCE: Ark. Code Ann. § 12-41-502 (Michie Repl. 1995).

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SPEED LETTER

Release

DATE *11-18-96*

TO: PULASKI COUNTY REGIONAL
DETENTION FACILITY
3201 W. ROOSEVELT
LITTLE ROCK, AR. 72204 [illegible] A 11:24

FROM: LITTLE ROCK MUNICIPAL COURT
(CRIMINAL DIVISION)
600 WEST MARKHAM
LITTLE ROCK, AR 72201
371-4509, 371-4739, 3714742 *AKA-Glenda Walker*

PLEASE FILL IN THE APPROPRIATE INFORMATION

Real name
DEFENDANT'S NAME: *Willie Young*

CASE NUMBER(S): *17176*

WARRANT NUMBER(S): _____

CHARGES: *Cont 96-8005*

DEFENDANT COMMITTED: YES _ NO _
CASE TYPE: FELONY _ MISDEMEANOR ✓

REASON COMMITTED: _____

TIME TO SERVE: PLACE TO SERVE: PCRDF ___
___ MONTHS WEEKENDS ___
___ DAYS COMMUNITY SERVICE ___

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(2)

No. 01-774

Supreme Court, U.S.
FILED
DEC 28 2001
CLERK

In The

Supreme Court of the United States

CITY OF LITTLE ROCK,

Petitioner,

v.

WILLIE MAE YOUNG,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

ROBERT PRESSMAN*
22 Locust Avenue
Lexington, Mass. 02421
781-862-1955
**Counsel of Record*

Counsel for Respondent

December 2001

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
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QUESTIONS PRESENTED

1. Whether the particular manner in which City and County authorities continued the plaintiff's seizure after a judge ordered her release violated the Fourth and Fourteenth Amendments.

2. Whether the City's knowledge of repetitive practices and its causal role were sufficient to warrant its joint liability for the plaintiff's treatment after her return to the custody of County authorities.

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RESPONDENT'S BRIEF IN OPPOSITION

Additional Statutory Provision at Issue

Arkansas Code Annotated Section 12-41-401

(a) The city council shall have the power to erect, establish, and maintain a city jail, which shall be in the keeping and under the control of the chief of police, under such rules and regulations as the city council may prescribe.

(b) The city council shall provide one (1) or more watch houses or stations and shall also provide suitable rooms for holding the police court.

(c) There shall be provided a separate apartment or ward for females in all city jails in cities of the first class.

STATEMENT[1]

On November 16, 1996, a Little Rock policeman arrested Mrs. Willie Mae Young on a warrant for Glenda Walker; he took her to the Pulaski County Regional Detention Facility (PCRDF), which the City had used for its jail for a number of years. Jail staff, in a standard process, found that Young was not the subject of another hold or warrant. A City employee did the same, toward the end of her nightly shift, when preparing the Little

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[1] This brief "cite[s] [and] quote[s] from the record . . . " [Supreme Court Rule 12(7.)] in the Court of Appeals. The citation forms used are explained in the Appendix to this brief at 8.

Rock Municipal Court docket for November 18 (which did show holds for some other persons).[2]

In court, on November 18, a fingerprint analysis showed that Young was not the subject of the warrant. [Tr. 6-14-99 at 69,4 to 70,17] "[J]udge Munson . . . dismissed the charge as to Ms. Young and ordered her released. . . . " [App. 1-2 (Ans. to Compl., para. 41); see also App. 3-4 (Ans. to Compl., para. 50) (" . . . Judge Munson directed that she be released . . . ")] That afternoon, the experienced Little Rock Police officer, who worked at the courtroom's "police computer," as an officer, bailiff, described Young's travail to "[his] supervisor," a LRPD sergeant, writing in part: "Judge Munson dismissed the contempt charge and ordered Ms. Young released." [App. 5, Tr. 6-14-99 at 121,19 to 123,4; at 128,19-24; EXs at 19]

Upon the court's ruling, Young, a citizen with a spotless personal record, was the subject of no known basis for a seizure. And, the City could have *checked again* in seconds (but did not). [Tr. 6-14-99 at 90,14-23; at 130,3-6; at 135,2-22; PApp. 208,14 to 209,7; 210,18 to 212,28] Nevertheless, an armed, uniformed LRPD officer, required her to enter a locked holding cell, containing other female detainees. Mrs. Young, a person who abhors profanity, was immersed in a torrent of curse words by the other women and males, in the adjacent male cell, for approximately 30 minutes. [Tr. 6-14-99 at 71,3 to 72,18; at 74,13 to 75,23]

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[2] 3App. 619; Tr. 6-15-99 at 65,6 to 68,4; EXs at 4,7,8,11; Tr. 6-14-99 at 124,7-10; at 137,22-25; Tr. 6-15-99 at 34,22 to 36-19; at 117,10 to 119,14; PApp. 208,14 to 209,7; EXs at 22-26.

When Pulaski County deputies returned, the LRPD officer surrendered City custody of Young and the other female detainees by opening the cell door. The deputies promptly HANDCUFFED YOUNG AND CHAINED HER TO 4 or 5 OTHER WOMEN, for the return trip to the jail, where deputies incarcerated her. Thereafter, a deputy strip searched Young. The PCRDF released Young about 2½ hours after the LRPD officer had relinquished custody of her. [Tr. 6-14-99, at 75,2 to 82,5; EXs at 81,87]

The City knew that the handcuffing and chaining would occur. It was the standard operating procedure, day after day, year after year. [Tr. 6-14-99, 138,12 to 139,6; at 139,18 to 140,17; Tr. 6-15-99, at 129,16-19; at 131,10-20] Moreover, many persons similarly situated to Young (*i.e.*, no identified basis for seizure after repetitive checks and a court ruling) were subjected to such intrusive treatment. LRPD witnesses and other evidence revealed that Court rulings regularly involved instances of *nolle prosequi*, dismissal of the case, bond posted in court, release on own recognizance, detainee sentenced to time served, and mistaken identity. [Tr. 6-15-99, at 38,10 to 40,19; at 110,25 to 111,25; EXs at 36,ls.17-18] The City also knew that after such persons reached the detention facility, they would be locked up until they were released. [Tr. 6-14-99, at 139,7-10] The City noted that 35 to 40 persons had been brought to the court on November 18, 1996, and that Monday "was a heavy day" [6-15-99, at 34,6-18], allowing the jury to infer that after several years of jail operation the City understood that delays in release from the known, intrusive detention would occur.

The City knew that the detainees brought to the court and later returned to the jail included many persons held

on very serious charges. For example, on November 18, 1996, persons were held for: first degree battery, possession of cocaine with intent to distribute (2 cases), possession of cocaine (3 cases), and possession of a firearm. The City knew that these persons had been outside the secure environment of the jail, and, as well, of the right to strip search such persons before returning them to the general jail population. The City knew that the County process began (and continued for a period at the jail) by treating Young (and like persons) in the exact same manner as the persons held on serious charges. [Tr. 6-14-99, at 140,18 to 144,16; EXs at 22-26; *Bell v. Wolfish*, 441 U.S. 520, 558-60 (1979)]

The City answered paragraph 50 of the complaint as follows:

> Separate defendants admit that Plaintiff's treatment by members of the Little Rock Police Department by returning her to the custody of the county detention staff after Judge Munson directed that she be released *was in accord with the policies or customs of LRPD*. [App. 4, emphasis added]

As shown, the LRPD "return[ed] . . . custody" of detainees to the County at the door of the holding cell. Assistant Chief Stuart Thomas testified that his command included the LRPD officers involved in handling detainees appearing in the municipal court. He testified to what "we" (referring to LRPD officers) do in managing detainees and to "our practice."[3]

---

[3] Tr., 6-15-99, at 106,5-12; at 107,14-25; at 109,24 to 110,1; at 110,25 to 111,13.

Mrs. Young and other detainees came to the court in orange jail uniforms provided to them at the County jail. However, there was evidence that for years inmates of several jurisdictions had performed work in the community with somewhat altered jail attire to denote their status. A City witness conceded that altered attire for persons with rulings like Mrs. Young was also feasible.[4] There was also evidence that varied modes of transportation could be used so that all persons need not return to the jail handcuffed and chained to each other. [Tr. 6-14-99, at 77,12-14; Tr. 6-15-99, at 59,6-25; EXs at 82-86 (trips with 1 to 30 persons)] Mrs. Young's clothing and personal effects were stored at the PCRDF. However, there was evidence that a person need not return to the PCRDF in chains to secure her property. [Tr. 6-15-99, at 74,1 to 76,19] Finally, Assistant Chief Stuart Thomas and Officer, Bailiff Jim Massie testified repeatedly that the City had given no consideration to dealing with persons like Mrs. Young in a different, less intrusive manner.[5]

The jury could find that the City had the power to address the situation, of which it was aware, prior to Young's experience. The City provided at least 42-44 percent of the inmates to the PCRDF (a regional jail). [Tr. 6-15-99, at 63,19 to 64,1; at 130,5-13] The issue of the handling of persons like Young could have been (but was

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[4] Tr. 6-14-99, at 89,19 to 90,6; at 146,16 to 147,9; Tr. 6-15-99, at 28,6-20; at 73,8-22; at 134,6 to 136,17.

[5] *Officer, Bailiff Jim Massie* (Tr. 6-14-99 at 144,25 to 145,17; at 149,9-14; Tr. 6-15-99, at 32,2-9) *Assistant Chief Stuart Thomas* (Tr. 6-15-99 at 126,3-11, 20-24; at 129,20 to 130,4; at 131,21-25; at 134,6-10; at 136,1-10; see also at 108,1 to 110,9).

not) raised by the City at the sheriff's monthly meeting of city chiefs. [Tr. 6-15-99, at 64,2 to 65,5; at 126,20-24; at 129,20 to 130,4; at 131,21-25] A sheriff's policy on the transportation of inmates to and from courts addressed situations where an inmate brought to court would not be returned to the jail. [EXs. at 15-18] Examples included where "charges were dismissed, the person made bail or paid a fine, etc." [*Id.* at 17] While it required a check with a "court official," the sheriff understood the LRPD officers working in the courtroom to be within that category. [Tr. 6-15-99, at 92,20 to 93,6] As Assistant Chief Thomas testified that the sheriff was "particularly receptive if we have problems or issues or we have ideas" [Tr. 6-15-99, at 120,9-15], the jury could find that a problem like Young's would have been resolved, if the City, with its obvious leverage, had raised it.

The City had an additional option. Under Arkansas law (Ark. Code Ann. Sec. 12-41-401), it had the authority to operate its own jail, subject to its full control. See *supra* at 1.[6]

The jury returned a verdict in favor of Mrs. Young (and against the City of Little Rock). By special verdict form, it awarded Mrs. Young $35,000 for the "first period" and $65,000 for the "second period."[7] However,

---

[6] The City chose instead to continue the interactive relationship with the County, which it helped to fund. [Tr. 6-14-99, at 149,15 to 151,5; Tr. 6-15-99, at 77,2-9; at 119,19 to 120,2; Ark. Code Ann. Sec. 12-41-506]

[7] 3App. 650 (". . . . The plaintiff divides her unreasonable seizure claim between two periods of time. The *first period* extends from the time immediately after she appeared before

in entering judgment on the verdicts and awarding attorneys' fees, the district court deducted from the amount to be paid by the City the full amount of Young's prior settlement with the County defendants. [Pet. App. 13-14][8]

REASONS FOR DENYING THE WRIT

A. The Facts Are Stated In the Petition in A Manner which Conflicts with the Standard Governing at this Stage of the Case and which Is Otherwise Problematic

Petitioner's version of the facts can not properly be relied upon at this stage. It could not be used if review were granted. It is, in essence, the factual picture rejected by the jury.

A jury rendered a verdict for Mrs. Young after receiving the parties' competing evidence and closing arguments. Before and after the verdict, the City moved for judgment as a matter of law as to each period addressed in the verdict. The district court denied these motions. [Tr. 6-15-99 at 140; Pet. App. 30] The Petition's factual assertions have been crafted with a complete disregard

---

Judge Lee Munson until employees of the Pulaski County Sheriff's Dept. resumed custody of her at the Little Rock Municipal Court Holding Cell. The *second period* extends from the time employees of the Pulaski County Sheriff's Dept. resumed custody of her at a Little Rock Munic. Ct. holding cell until her release from custody at the Pulaski County Regional Detention Facility. . . . " [Instruc. 6])

[8] As the Petition does not address the amount of damages as such, we do not summarize the evidence underlying the awards.

for the procedural posture of the case and are otherwise problematic.

The rules for the identification of the facts in this posture are well established. A version of the evidence supporting the jury's verdict (and the prevailing party) is identified. *Lavender v. Kurn*, 327 U.S. 645, 649 (1946). If there "[is] a reasonable basis in the record . . . " for this version of the case, "the appellate court's function is exhausted . . . ", the challenging party "[being] not free to relitigate the factual dispute in a reviewing court." *Id.* at 652-53.[9] See also, *e.g.*, *Ryther v. KARE 11*, 108 F.3d 832, 844-45 (8th Cir. 1997) (en banc) (treatment of facts after jury verdict); *Baynard v. Malone*, 268 F.3d 228, 234-35 (4th Cir. 2001) (same).

The global problem with the City's factual picture emerges from a comparison of the statements in the petition and this response. The City's picture is both incomplete and tilted, contrary to the standards cited, in its favor. Moreover, Mrs. Young shows by numerous record references that her version is one for which "there [is] a reasonable basis in the record . . . "; and the City's effort to relitigate the facts, therefore, must fail. *Lavender, supra*, 327 U.S. at 652.

There are specific problems with the City's statement as well. The City states [Pet. 4] that after the court's ruling "Ms. Young was taken by the Court's bailiff to a

---

[9] "[W]here, as here, there is an evidentiary basis for the jury's verdict, the jury is free to disregard or disbelieve whatever facts are inconsistent with its conclusion." *Lavender*, 327 U.S. at 653.

lock-up facility near the courtroom, pursuant to County policy. . . . " However, the jury could credit other evidence, including the City's own answer, that

> Plaintiff's treatment *by members of the Little Rock Police Department* by returning her to the custody of the county detention staff after Judge Munson directed that she be released *was in accord with the policies or customs of LRPD.*

See App. 4 and *supra* at 4 (citing other evidence).[10]

The City relies upon what it terms "[t]he speed letter issued by the court after Ms. Young's appearance. . . . App. 38." [Pet. at 4] The portion of the "speed letter" appearing at Pet. App. 39 is erroneous, insofar as it indicates authorized signature "illegible." As shown by the "speed letter" appended to this response [App. 7] and the transcript [Tr. 6-15-99, at 19,13 to 20,14], the original document shows the signature of Nena O'Rourke, a clerk, apparently by a signature stamp.[11]

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[10] The existence of admitted City "policies or customs" distinguishes this case from *Sampson v. City of Xenia,* 108 F.Supp. 2d 821, 839 (S.D. Ohio 1999) (court policy). See Petition at 11-12.

[11] The original document is as set forth here, not as shown in the petition. Ms. O'Rourke's signature is faint. It appears on a *copy* only when the darkness setting on the copier is increased. The Petition utilizes, inadvertently, a version of the "speed letter" available early in the litigation and apparently produced without increasing the darkness setting.

B. The Particular Continuing Seizure at Issue in this Case Does Not Warrant Review by This Court, in Part Because the City Has Taken Steps to Avoid Repetition of Treatment Like Mrs. Young's

The City's first proposition supporting review presents this case in a false light. This case is not about time for a release process, as such. It is about the particular manner in which authorities continued Mrs. Young's seizure, after, according to the City's own answer and other evidence, the court "dismissed the charge as to Ms. Young and ordered her released. . . . " See *supra* at 2.[12]

The City treated Young exactly like persons ordered to be held on charges such as possession of cocaine with intent to distribute and illegal possession of a firearm.[13] According to its Answer, its uniformed, armed police officer locked her in a cell. According to its Answer, its officers returned her to County custody, "in accord with the policies or customs of LRPD," without distinction, knowing that she would be promptly handcuffed and chained to other detainees. The City knew that treatment

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[12] The City relies on the "speed letter" – completed by a clerk, apparently with a signature stamp. See *supra* at 9. This document contains no order that Mrs. Young be locked in a cell, handcuffed, chained to 4 or 5 persons, otherwise treated like persons held on serious charges, or strip searched. If there is conflicting evidence on the nature of the Municipal Court's order, there is surely "an evidentiary basis for the jury's verdict." Therefore, that body's implicit resolution of the conflict is final. *Lavender v. Kurn*, *supra*, 327 U.S. at 653.

[13] The Statement contains citations to the record supporting each factual assertion in this paragraph.

exactly like potential serious offenders, who had been outside the jail, would continue for as long as 2-1/2 hours. Despite the fact that this intrusive treatment regularly befell persons whose only known basis for detention had been resolved, the City had not considered less intrusive treatment, internally or with the sheriff. The jury could find that the problems raised by the City (jail uniforms, etc.) could be surmounted and a sheriff's policy envisioned situations where persons like Mrs. Young would not be returned to the jail. The judgment of which review is sought is rooted in these particular facts, not mere delay in release. It is as the Court of Appeals concluded a "[shocking] incident" "characterized by gross indignities." [Pet. App. 11, 12] This case manifests no deference to one part of the relevant equation, namely, "the nature and extent of the intrusion upon the individuals' Fourth Amendment rights. . . . " *E.g., United States v. Place*, 462 U.S. 696, 705 (1983). This is a serious affront to constitutional values, which should not be approved in this case, and thereby generally.

Petitioner's argument based on *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) [Pet. at 7] is similarly flawed. This case cannot be resolved in petitioner's favor by dealing solely with "a reasonable amount of time to out-process a detainee. . . . " See also Pet. at 9, para. i. (same flawed contention).

An exchange during the Court of Appeals argument undermines the City's implicit argument that these kinds of "gross indignities" are an unavoidable element of implementing "a court order of acquittal, dismissal, or release."

> Judge Richard Arnold: But Mr. Carpenter, the woman is in the court. She's not in the jail. The judge says show her released. Could they make the check for holds there at the courthouse?
>
> City Attorney Thomas Carpenter: Your honor, whether they could or not, it seems to us, is not the issue. The issue is whether it's unconstitutional for the [county] sheriff to set up a policy that requires the transfer back.
>
> Judge Arnold: *Have you taken any steps to see that this doesn't happen again.*
>
> Mr. Carpenter: *We have.*
>
> Judge Arnold: I mean it's official arrogance. That's what it is. [emphasis added][14]

Nor is this the only evidence that the repetitive failure to accord weight to the personal right at stake was unnecessary. In *Lewis v. O'Grady*, 853 F.2d 1366 (7th Cir. 1988), relied upon by the City [Pet. at 7], the Court of Appeals noted that three of six Cook County branch courts employed a telephone check and "[did] not require the released prisoner to be returned to the [jail] unless he wants to reclaim personal property." Similarly, the sheriff's policy, first adopted by his predecessor, envisioned exceptions for persons like Mrs. Young. See *supra* at 6 and EXs. 15,18.[15]

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[14] The oral argument is available at http://8cc-www.ca8.uscourts.gov/Oral-Arg/scripts/downrm.asp?CaseNbr0=993595&FileLoc=/OralArg/993595

[15] Respondent also notes the evidence, which this jury implicitly credited, regarding ways to deal with the fact of jail uniforms, the location of clothing and personal property, and transportation. See *supra* at 5.

The City's effort to show a problem for other jurisdictions by reference to the "U.S. Marshall's office" [Pet. at 6] is flawed from two perspectives. First, it is outside the record, without citation, and vague. If this occurs, one knows nothing about where and how a person waits, or whether practices vary from office to office, as they did in Cook County.

Secondly, the reference to waiting "to assure that there are no outstanding warrants" (*id.*) exposes another fundamental problem with the approach the City seeks to validate. The jury could find from the evidence here that an *additional* warrant check could have been done in the courtroom in a matter of seconds [Tr. 6-14-99, at 130,3-6; PApp. 208,14 to 209,7] and that a major reason for the intrusive treatment of Young (and others), whose bases for seizure had been resolved, was to allow, belatedly, for another check for warrants and holds at the County jail. [Tr. 6-14-99, at 152,12 to 153,23] This flouts basic Fourth Amendment standards; a search or seizure must be justified at the outset. *E.g., Beck v. Ohio*, 379 U.S. 89, 91 (1964).

The City's complaint about the role of the jury and the Court of Appeals' characterization of that role [Pet. at 7, 9] ignores the legal framework for resolution of this case. Under this Court's precedent, Jury Instruction 9 [3App. 653] called, correctly, for balancing the intrusion on Young's Fourth Amendment rights, against the identified governmental needs, taking account of alternative ways of meeting those interests.[16] The challenged jury

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[16] *E.g., Terry v. Ohio*, 392 U.S. 1, 9, 18-21, 28-29 (1968); *Delaware v. Prouse*, 440 U.S. 648, 659 (1979); *United States v. Place*, 462 U.S. 696, 707-10 (1983).

role flowed from its considering the parties' evidence in the light of this legal standard.

The jury implicitly found, in the context of what the City terms "out-processing," that the intrusion on Mrs. Young's rights outweighed "the need for it." The language for which the lower court is chastised – "[c]ertainly the jury might have accepted this argument, but we do not think it had to" [Pet. 9] – is a way of saying that on the relevant evidence a reasonable jury could find the City's interests to be outweighed, although the evidence did not compel that result. Thus, the Court of Appeals merely applied the settled standard for reviewing a jury's implicit findings. See *supra* at 8.

On a proper version of the facts, Petitioner does not present a case of conflicting holdings in the circuits. See Petition at 7-8. While there was a court order dismissing a charge, following a *nolle prosequi*, in *Whirl v. Kern*, 407 F.2d 781 (5th Cir. 1968), it is apparent that the plaintiff was not present. Moreover, the language relied upon by the City is dictum, there being no question that the nine-month delay was excessive. For the same reason, no doubt, the point is simply an assertion in a lengthy opinion, without reference to this Court's precedent. [407 F.2d at 785-86, 792] In *Lewis v. O'Grady, supra*, the Court of Appeals for the Seventh Circuit distinguished the situation where a judge ordered a release (853 F.2d at 1369); that is the situation, which this jury, with a sound evidentiary basis, implicitly found here. See *supra* at 2.

The district court decisions in *Mason v. Stock*, 955 F.Supp. 1293 (D.Kan. 1997) and *Pennington v. Hobson*, 719 F.Supp. 760 (S.D.Ind. 1989) [Pet. at 8] do not conflict with

the ruling here. In *Mason*, plaintiff was held by police for one half-hour after his DUI test proved negative. However, this time was used to complete and deliver to him a complaint for allegedly resisting arrest at the time of the earlier traffic stop. See *Mason*, 955 F.Supp. at 1297, 1300, 1304. *Pennington* concerns a delay in release by police after an exculpatory laboratory test conducted at a distance from the jail; there was no court order for release. See 719 F.Supp. at 764.[17]

C. On a Proper Version of the Facts at this Stage of the Case, the Determination of Joint City Liability for the Period After Mrs. Young's Return to County Custody Involves Neither Inconsistency with this Court's Precedent, Nor Conflict with Other Circuits

All of the City's arguments underlying its second proposition in support of review are linked to one portion of the City's proposed second question for review. This is that the harm to Mrs. Young after the City returned custody of her to county deputies was the product of "unconstitutional acts of county jail employees *without the participation or knowledge of the city*" (emphasis added). Because the jury, with an adequate evidentiary basis, implicitly found that the City had the requisite knowledge and causal role, these contentions are flawed and

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[17] The Petition refers [at 4] to the inaction of Young's counsel. There is no reference to this assertion, or any argument about its significance, in either the City's principal brief, or its reply brief, in the Court of Appeals.

the Court should not accept review of the second question proposed by the City.

The City was held to be jointly liable with the County for Mrs. Young's unconstitutional treatment in the second period (described *supra* at 6, n. 7). Section 1983, like the tort law from which it often draws, encompasses situations like this one, where more than one party is the cause of a harm.[18]

Here, admittedly pursuant to its policy or custom, the City started the ball rolling by returning Young to County custody at the cell door without any distinction based upon her status (*i.e.*, no known basis for detention or other intrusive treatment after multiple checks and court ruling). Given the evidence previously cited, the City communicated to County staff that she was fit to be cuffed, chained and otherwise treated like persons ordered to be held on very serious charges – the standard operating procedure, including for various categories of persons like Young, whose only known bases for detention had been resolved by court ruling.

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[18] *Carey v. Piphus*, 435 U.S. 247, 257-58 (1978); *Restatement of Torts Second*, Sec. 435 & Comment d; *Buffkins v. City of Omaha*, 922 F.2d 465, 471-72 (8th Cir. 1990) (City "in part" cause of deprivation); *Northington v. Marin*, 102 F.3d 1564, 1569 (10th Cir. 1996) (citing instances where Section 1983 persons "concurrently violate others civil rights"); *Canton v. Harris*, 489 U.S. 378, 385 (1989) ("whether there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation").

Other aspects of the City's knowledge and causal role have been detailed.[19] Continued detention upon arrival at the jail was known and delays in release of 2½ hours could be anticipated. The City knew that persons with serious drug and weapons charges were being returned to the jail with Mrs. Young and of the right to strip search such persons. The City knew that the County staff would treat Young (and like persons) at the cell door, on the return trip to the jail, and for a time upon arrival at the jail, in the same manner as the persons ordered to be held on serious charges. Finally, given the repetitiveness of treatment like Young's, the City had had the opportunity to avoid Young's travail by a range of alternatives, including by operating its own jail, if this was the only way to avoid the repeated unlawful treatment of persons with no known basis for seizure.

In sum, the jury could find that Young's handcuffing and chaining, her continued incarceration at the jail, and her second strip search were the known or logical outcomes of two deliberate policy choices by the City. These were to return persons like Young, without a known basis for seizure, to the custody of the County without distinction and to rely upon the county authorities and jail, despite knowledge of the treatment of such persons.[20]

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[19] The Statement contains citations to the record supporting all factual assertions in this paragraph.

[20] The existence of these policies or customs distinguishes this case from three decisions cited by the City in the Petition at 11, d. and 12, f. These decisions are *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1444 (9th Cir. 1989); *Carter v. Mayor and City Council of Baltimore*, 2001 WL 1092108 (D.Md. Sept. 13, 2001); *Dettelis v. City of Buffalo*, 3 F.Supp. 2d 341, 348 (W.D.N.Y. 1998), *aff'd*, 166 F.3d 1200 (2d Cir. 1998) (unpublished opinion).

The City by its officials and employees could not ignore or pass off its role in repetitively subjecting persons to constitutional violations. It must treat "the Constitution as 'the fundamental and paramount law of the nation'. . . . " *Cooper v. Aaron*, 358 U.S. 1, 17-19 (1958). And, if necessary to do so, it must operate again its own jail, "under the control of [its] chief of police" [Ark. Code Ann. Sec. 12-41-401(a)] in a lawful manner. Compare *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969) (saving of money does not justify invidious distinctions among citizens); *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218, 233-34 (1964) (power of court to order school system to be reopened and funded).

On these facts, there is no conflict with the decisions in *Deaton v. Montgomery County, Ohio*, 989 F.2d 885, 888 (6th Cir. 1993) or *Patrick v. Jasper County*, 901 F.2d 561 (7th Cir. 1990). See Petition at 10-11. These cases concerned one-time situations.

In *Deaton*, a city, by contract, operated a jail for county arrestees. City employees strip searched one group of arrestees, a practice of which the County had no forewarning. There was no county liability due to this lack of knowledge and the absence of "deliberate indifference." [989 F.2d at 889-90] Here, the City, by policy, repetitively turned over Young and like persons for known unconstitutional treatment and, on all the facts, a strip search was a not surprising element of that conduct. Moreover, the City had not done what it could to address the issue. Also, the evidence here, of City action and inaction, established a city policy of deliberate indifference to the constitutional rights of persons like Young. *Canton v. Harris*, 489 U.S. 378, 389-90 (1989); *Farmer v.*

Brennan, 511 U.S. 825, 840-41 (1994) (explaining *Canton's* "objective" form of deliberate indifference); *Collins v. City of Harker Heights*, 503 U.S. 115, 124 (1992) (explaining *Canton*).[21]

Patrick v. Jasper County also involved a "one-time" problem. There, after his arrest without a warrant and incarceration in Jasper County for four hours, "Patrick was transferred to the LaPorte County Jail due to the overcrowded conditions in the Jasper County Jail resulting from the number of individuals arrested in the 'drug bust'. . . . ' " [901 F.2d at 562-63, 568-69 & n. 16] He later sought to hold Jasper County liable for the fact that he was not taken before a magistrate during his 36 hours in LaPorte County. [901 F.2d at 563, 569] However, he "presented nothing more than bald allegations and speculation in support of his proposition that Jasper County [was] responsible for the time he was detained in the LaPorte County Jail." [901 F.2d at 569] Again, the repetitive conduct pursuant to policy, the knowledge, and the failure to take remedial actions, relied upon here, are lacking in *Patrick*.

The City complains because Instruction 7, for the "second period," allowed City liability if harm was "a direct result of policy of the City of Little Rock . . . " [Pet. App. 35], rather than if City policy was "the moving force behind . . . " the harm. [Pet. at 14, k.] The court's choice (using the word "a" rather than "the") comports with the

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[21] The district court in *Ford v. City of Boston*, 154 F.Supp. 131 (D.Mass. 2001), cited by the City [Pet. 12, 15], relied in the main upon the *Canton* form of "deliberate indifference." [154 F.Supp. at 149-50]

governing standards on these facts. See *supra* at 16 and n. 18.

The City also complains that the district court refused to instruct the jury that under a state law, the County sheriff was in control of the jail. [Pet. at 14, j.] The district court provided a fully adequate reason for rejecting the City's proffer.[22] In addition, the City could argue its theory of the sheriff's control and causal role under the language of Instruction 7 quoted above. *Ryther v. KARE 11, supra,* 108 F.3d at 847 (8th Cir.).

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[22] See Tr. 6-16-99, at 8 (" . . . I'm going to reject the one on the duty of the . . . the law stating that the sheriff has the custody and control of the jail and the county, because there is no law that requires the municipality, that is, the City of Little Rock, to send its prisoners to the county jail. And the issue is the policy or practice of the City of Little Rock in sending prisoners to the county jail and whether the city is deliberately indifferent or has a conscious disregard for the Constitutional rights of the people who are so sent. And it matters not what the law is with respect to the county's duty to have a jail and to have the sheriff. [ ]. . . . I think it's a correct statement of the law, but it might mislead the jury, because I would have to say, of course, the City of Little Rock – there's no law that says the City of Little Rock has to send its prisoners there.")

CONCLUSION

The Petition should be denied.

Respectfully submitted,

ROBERT PRESSMAN
22 Locust Avenue
Lexington, MA 02421
781-862-1955

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PLAINTIFF'S EXHIBIT 16

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

MRS. WILLIE MAE YOUNG — PLAINTIFF

V. — CIVIL ACTION NO. LR-C-0035

THE CITY OF LITTLE ROCK,
A Public Body Corporate — DEFENDANTS

Plaintiff's Second Amended Complaint

(41.) Upon the plaintiff's return to the courtroom, Judge Munson stated that the wrong person had been arrested. Judge Munson dismissed the contempt charge and ordered Mrs. Young released. Shortly thereafter, however, a uniformed Little Rock police officer returned Mrs. Young to the locked holding cell. She was jailed there for approximately 30 minutes.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

WILLIE MAE YOUNG PLAINTIFF

V. NO. LR-C-97-0035

THE CITY OF LITTLE ROCK, et al. DEFENDANTS

(Filed June 24, 1998)

Separate Defendants James Brown ("Brown") and the City of Little Rock ("City") (hereinafter "Separate Defendants"), by and through their attorneys Thomas M. Carpenter, City Attorney, and Cynthia S. Dawson, Assistant City Attorney, state as follows for their answer to Plaintiff's Second Amended Complaint:

41. Separate Defendants admit that Judge Munson, upon Plaintiff's return to the courtroom, dismissed the charge as to Ms. Young and ordered her released, and that a uniformed LRPD officer returned her to the locked holding cell. Separate Defendants are without sufficient knowledge, information or belief to admit or deny the exact length of time Plaintiff spent in the holding cell before being returned by county detention employees to PCRDF.

PLAINTIFF'S EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

MRS. WILLIE MAE YOUNG — PLAINTIFF

V. — CIVIL ACTION NO. LR-C-0035

THE CITY OF LITTLE ROCK,
A Public Body Corporate — DEFENDANTS

Plaintiff's Second Amended Complaint

(50.) The treatment of Mrs. Young by members of the Little Rock Police Department after Judge Lee Munson directed that she be released (see paragraph 41) was in accordance with the policies of the Police Department of the City of Little Rock. Alternatively, this treatment was in accord with the customs for the operation of the Department.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

WILLIE MAE YOUNG PLAINTIFF

V. NO. LR-C-97-0035

THE CITY OF LITTLE ROCK, et al. DEFENDANTS

ANSWER OF SEPARATE DEFENDANTS JAMES BROWN AND THE CITY OF LITTLE ROCK TO PLAINTIFF'S SECOND AMENDED COMPLAINT

(Filed June 24, 1998)

Separate Defendants James Brown ("Brown") and the City of Little Rock ("City") (hereinafter "Separate Defendants"), by and through their attorneys Thomas M. Carpenter, City Attorney, and Cynthia S. Dawson, Assistant City Attorney, state as follows for their Answer to Plaintiff's Second Amended Complaint:

50. Separate Defendants admit that Plaintiff's treatment by members of the Little Rock Police Department by returning her to the custody of the county detention staff after Judge Munson directed that she be released was in accord with the policies or customs of LRPD.

PLAINTIFF'S EXHIBIT 15

OFFICER'S REPORT

DATE: 11-18-96 SUBJECT: WILLIE YOUNG 96-17176

TO: SGT. AQUILINO

FROM: OFFICER MASSIE

Sir:

On This date Willie Young B/F was brought to Court (LRMC) for Warrant #405189 which showed to be on Glenda Walker 2-21-62. Ms. Young has been arrested because she was listed in the computer as an A.K.A. When Ms. Young appeared before Judge Munson, We took her thumb print which was different from Glenda Walker. Ms. Young was not the person arrested on the original charges 96-8004-7. Judge Munson dismissed the contempt charge and ordered Ms. Young released. A warrant was re-issued for Glenda Walker.

SIGNATURE: /s/ J Massie 10297

NOTE: Use this form for all written reports to your Supervisor. Use additional paper of the same size if needed.

App. 6

WILLIE YOUNG

Taken in Court 11-18-96
/s/ J Massie

"Glenda Walker"

[Fingerprint Omitted In Printing]

Release

SPEED LETTER

TO: PULASKI COUNTY REGIONAL DETENTION FACILITY
3201 W. ROOSEVELT
LITTLE ROCK, AR. 72204

DATE 11-18-96

96 NOV 18 A 11:24

FROM: LITTLE ROCK MUNICIPAL COURT (CRIMINAL DIVISION)
600 WEST MARKHAM
LITTLE ROCK, AR 72201
371-4509, 371-4739, 3714742

Real name AKA Glenda Walker

PLEASE FILL IN THE APPROPRIATE INFORMATION

Real name
DEFENDANT'S NAME: Willie Young

CASE NUMBER(S): 17176

WARRANT NUMBER(S): _____

CHARGES: Cont 96-8005

DEFENDANT COMMITTED: YES____ NO____ CASE TYPE: FELONY___ MISDEMEANOR___✓

REASON COMMITTED: _____

TIME TO SERVE: _____ MONTHS
_____ DAYS

PLACE TO SERVE: PCRDF_____
WEEKENDS _____
COMMUNITY SERVICE _____

DEFENDANT UPDATE

BOND SET AT: $_____

BOND TYPE ALLOWED: SURETY____ CASH____ OTHER___

DEFENDANT RECOGNIZED: YES____ NO____

BOND POSTED WITH_____

DEFENDANT MAY BE RELEASED IF NO OTHER DETAINERS: YES: ✓ NO: _____

REMARKS: wrong person charged-

this dft is Willie Young-
Glenda Walker is correct dft

Glenda O'Rourke

(AUTHORIZED SIGNATURE)

DEFENDANT'S
EXHIBIT NO. 1

App. 7

BEST AVAILABLE COPY

Form of Citations to the Record in this Brief

Ex. [page number] – page number of City's compilation of exhibits submitted to the Court of Appeals

Tr., 6-14-99 at [page number, line numbers] – trial transcript, 6-14-99

Tr., 6-15-99 at [page number, line numbers] – trial transcript, 6-15-99

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PApp. [page number] – Mrs. Young's Separate Appendix in Court of Appeals